IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 157 of 2000

Date of Decision: 21 .06.2007.

State of H P. Appellant.

Versus

Chiranji Kumar. Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? Yes

For the appellant : Sh.V K Verma, Additional Advocate General.

For respondent. : Shri Rakesh Jaswal, Advocate.

Surinder Singh, J . (oral)

Appellant Charanji Kumar was convicted by Sub Divisional Judicial Magistrate, Ghumarwin under Section 16 (1-A) (i) of the Prevention of Food Adulteration Act, 1954 (Act for short) in Case No. 283/1 of 1990 decided on 20.2.1995 and sentenced to under go imprisonment for a period of one year and to pay a fine of Rs. 2000/-. In default of payment of fine, he was further sentenced to under-go rigorous imprisonment for a period of three months. He filed an appeal No. 13/95. His appeal was accepted by the learned Sessions Judge and thereby acquitted him vide a detailed judgment passed on 27.12.1999.

Having felt aggrieved, the appellant-State filed the instant appeal on the ground that the first appellate Court had decided the matter in a slip shod and perfunctory manner. It had set unrealistic standards to evaluate the direct and cogent evidence of the prosecution. The reasoning given for

---

Whether reporters of the Local papers are allowed to see the judgment? Yes.

acquittal is un-tenable, whereas, the trial Court elaborately dealt with the evidence and had appreciated the facts in its right perspective, therefore, prayed to set aside the impugned judgment and to uphold the conviction and sentence passed by the trial court.

Succinctly stated, the prosecution case is that on 30-4-1990, Shri I.D. Verma, Food Inspector had visited the premises of"M/s Pyare Lal and Bros", Geherwin and found the respondent present there conducting the business for the said firm. The Food Inspector disclosed his identity, inspected the shop of the said vendor in the presence of Dila Ram. He found 40 kg. of "Suji" in an open bag for sale to the general public. He issued the notice Exhibit P1 in Form-VI to the respondent expressing his intention of taking the sample under the Act. Thereafter he purchased 600 grams of "Suji" after properly mixing it with clean and dry bamboo, Then divided in three parts and put one part in each of the three clean and dry bottles and sealed each bottle as per procedure. To this effect, a Panchnama Exhibit P3 in the presence of Dila Ram aforesaid was prepared. One part of the sample so taken was sent to the Public Analyst. On analysis, it was found to be adulterated since the same was containing four living and two dead insects and one piece of rodent excreta. On receipt of the report Exhibit P10 from the Public Analyst, necessary consent was obtained from the competent authority for the prosecution of the respondent and a complaint was presented after complying with the statutory provisions, in the trial Court. The respondent was charged with offence, as aforesaid. He pleaded not guilty and claim trial.

The prosecution in order to substantiate its case, examined PW1 Shri R.D. Dhiman Food Inspector and Shri R.L. Gupta, Dealing Assistant from the office of the Local Health Authority.

Learned trial Court upon consideration of the material placed before it, convicted and sentenced the respondent, as stated above, which

was reversed by the learned Sessions Judge and consequently, acquitted the respondent while placing his reliance on the case of ***Daulat Ram –v- State of H.P. 1998 (1) Sim.L.C. 322*** that while taking the sample, the method of quartering was not followed by the Food Inspector and by not doing so, the analysis of the sample became worthless and on facts held that the sample in question could not be said to be "insect infested" and unfit for human consumption . The presence of one rodent excreta was within the permissible limit as per rule 18.03 of the Prevention of Food Adulteration Rules, 1955.

I have heard Shri V.K. Verma, Additional Advocate General for the State and Shri Rakesh Jaswal, Advocate, for the respondent.

Shri Verma, Additional Advocate General, has vehemently argued that the sample of "Suji" on examination was found to be adulterated as defined in Section 2 (i-a) (f) of the Act and it was insect infested, thus it was not further necessary to show that this article of food was "unfit for human consumption". Shri Verma also took me through the evidence on record and ventilated that the respondent was rightly convicted by the trial Court and impugned judgment passed by the appellate Court is un-sustainable.

Contra, Shri Jaswal, the learned counsel for the respondent supported the impugned judgment and vehemently argued that the Food Inspector did not make the food article homogenous thus it was not a representative sample. Therefore, the report of Public Analyst looses its importance. It was further argued that the mere presence of the insects itself will not be sufficient to prove the charge without concluding that the article of food was unfit for human consumption, because of the presence of the insects.

I have bestowed my best consideration to the rival contentions and have gone through the evidence on record and the law applicable to it.

From the facts adduced on record, a very vital question arises whether the Food Inspector had adopted a proper method of taking the sample? If not what is its effect? My answer is "No". Consequently the respondent deserved acquittal on this ground alone.

The Food Inspector in his complaint has contended :

> "That entire Sooji was mixed with a clean and dry bamboo and purchased 600 grams Sooji, same was again divided into three equal parts by "quartering method" and put in three clean and dry bottles which were stoppered well and made the moisture proof….."
>
> (Emphasis mine)

Whereas, I.D. Verma, Food Inspector as PW1 has deposed that before taking the sample, he had mixed the "Sooji" properly and thereafter purchased 600 gms for Rs. 2.40 P. Then he divided the Sooji so purchased, in three equal parts and put it in three clean and dry bottles. From his this narration, it is seen that the Food Inspector was either not knowing what is "quartering method" or he deliberately did not follow the procedure while taking the sample. Thus both the situations are hazardous which materially prejudice the accused.

What is "quartering method"? The Division Bench of this Court in ***Bhagat Ram and two other connected matters –v- State of H.P. (1986 Sim.L.C.281-DB)*** while facing with a similar situation relied upon an authoritative Book on the subject viz., "Chemical Analysis of Food and Food Products" (Second Edition) by Morris B. Jacobs, which has described the procedure at page No 10 as under:

> "A method in common usage for obtaining representative samples is the procedure of quartering. Combine the portions obtained from various sections of the lot and, after mixing as thoroughly as possible by rolling in a sheet or blanket, if the sample is large, or paper, if the sample is of

> moderate size, from the material into a cone. Flatten the cone into a circular shape and divide into quarters. Take two opposite quarters, that is, quadrants 1 and 3, and repeat the above process. However, after dividing into quarters this time, the opposite quarters to those used before, namely, quadrants 2 and 4, are taken. This process is continued until a sample small enough for submission for analysis is secured."

Manifestly, the above procedure is required to be followed in order to obtain a representative sample. This appears to be a must when sample of food grains or articles like "Suji" are collected with the object of finding the extent and degree of "insect damaged" or "insect infestation". In the aforesaid case, the Division Bench has also observed that there can be no denying the fact that the insect damaged matter would be comparatively light in weight and would accumulate at the spot when shaken in a container. When the Food Inspector does not strictly adhere to the procedure of quartering, the possibility of a greater proportion of insect damaged matter being put in one part, specially the part sent for examination to the Public Analyst, cannot altogether be ruled out.

The above principle of law was followed and applied by this Court in ***Daulat Ram vs. State of H.P. 1998 (1) Sim.L.C. 322***.

Thus in view of the statement of Food Inspector and the averments made in the complaint that sample of "Suji" was made homogenous by mixing it with the help of Bamboo cannot be said to be the compliance of "quartering method" as discussed above. The failure to obtain a proper sample makes a subsequent analysis worthless. Thus, it can safely be held that the sample was not of a representative character. Therefore, the report of the Public Analyst losses its importance. The benefit of which goes to the accused.

Secondly, the point which needs serious thought is whether "insect infestation" is sufficient to hold the article of food adulterated?

It has been held by the apex Court in ***AIR 1976 Supreme Court 394: Municipal Corporation of Delhi –v- Kachru Mal,*** that mere "insect infestation" is not sufficient to hold the article of food as adulterated. Further proof that the article was unfit for human consumption is a must. After all the criminal liability of the accused has to be determined with respect to the state of sample, meaning thereby, the presence of insect damaged matter, on the day when the sample is collected. The dealer has to keep the article of food in a most hygienic condition. The insects are known to multiply rapidly and it has a life cycle of 21 days. No preservative was added. Food Inspector had not seen insects in the "Suji" container nor stated that it was stored in an unhygienic condition. Therefore, in order to determine if an article of food can be deemed to be "insect infested" and, therefore, "adulterated" the extent and degree of manifestation should be such as to render it unfit for human consumption. Therefore, rightly so, no court can categorize a sample "insect infested" when it is also of the opinion that the sample is unfit for human consumption on that account. (Pl. see: 1983 Cr.L.J. 1933). Thus it is imperative on the prosecution to lead a cogent evidence on that account failing which the prosecution cannot derive any benefit from such a report, like Ext. P10 in this case. However, the opinion of the Public Analyst who examined and analyzes the sample as to the fitness or otherwise of the sample for "human consumption" though could constitute legal evidence but that does not mean that his opinion would be binding on the court in absence of such a material. Thus, it is for the Court to weigh his opinion and to reach its own findings

Therefore, in the facts and circumstances of this case where "Suji" exhibited for sale was 40 Kg and sample was not made homogeneous by "quartering method", as aforesaid, the sample so taken in no manner can be called a representative sample of the bulk to fasten the criminal liability on the respondent.

Thus, for the fore-going reasons, the view taken by the Sessions Judge is legally correct. Accordingly, the impugned judgment does not require any interference. Hence the appeal is dismissed. The respondent is discharged of his bail bonds entered upon by him at any time of the pendency of this case. The matter stands accordingly disposed of.

(Surinder Singh)
Judge.

June 21, 2007.
(bm)